

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA
Plaintiff,

v.

Case No. 05-CR-213

KENNETH BEVERLY
Defendant.

ORDER

Defendant Kenneth Beverly seeks re-sentencing pursuant to 18 U.S.C. § 3582(c)(2) based on the Sentencing Commission's recent amendments to the crack and criminal history sentencing guidelines. However, eligibility for consideration under 18 U.S.C. § 3582(c)(2) is triggered only by an amendment listed in U.S.S.G. § 1B1.10(c) that lowers the applicable guideline range. U.S.S.G. § 1B1.10 cmt. n.1. The Sentencing Commission has not yet determined whether the new guidelines will be applied retroactively under § 1B1.10(c). Defendant's motion is thus pre-mature.

THEREFORE, IT IS ORDERED that defendant's motion (R. 224) is **DENIED** without prejudice.

Dated at Milwaukee, Wisconsin, this 28th day of November, 2007.

/s Lynn Adelman

LYNN ADELMAN
District Judge